

MAY 24 2006

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DATE: MAY 24, 2006

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YOUR REFERENCE: 09/901,512

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TO: U.S. PATENT AND TRADEMARK OFFICE  
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TELEPHONE NUMBER:

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FROM: MARK JOY

DIRECT LINE: (312) 616-5673

MESSAGE: **APPELLANTS' REPLY UNDER 37 C.F.R. SECTION 41.41 AND  
REQUEST FOR ORAL HEARING**

Patent Application No. 09/901,512

Applicant: Ross et al.

Filed: July 9, 2001

TC/AU: 3628

Examiner: Nguyen, Nga B.

Docket No.: 212463

Customer No.: 23460

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Patent Application No. 09/901,512

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**TRANSMITTAL OF  
APPELLANTS' REPLY BRIEF**

Mail Stop Appeal Brief – Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

In accordance with 37 CFR 41.41, appellants hereby submit Appellants' Reply Brief.

The items checked below are appropriate:

**1. Status of Appellant**This application is on behalf of ☐ other than a small entity or ☒ a small entity.**2. Oral Hearing**☒ Appellants requested an oral hearing in accordance with 37 CFR 41.47 at the time appellants filed Appellants' Brief on Appeal.

A separate paper requesting oral hearing is attached.

**3. Extension of Time**☐ Appellant petitions for a one-month extension of time under 37 CFR 1.136, the fee for which is \$ 0.00.☒ Appellants believe that no extension of time is required. However, this conditional petition is being made to provide for the possibility that appellants have inadvertently overlooked the need for a petition and fee for extension of time.

Extension fee due with this request: \$

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Application No. 09/901,512

Reply Brief Transmittal

**4. Total Fee Due**

The total fee due is:

Request for Oral Hearing	\$500.00 (Previously Paid)
Extension Fee (if any)	\$ 0.00

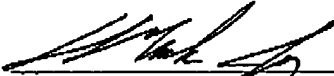
**Total Fee Due: \$0.00****5. Fee Payment**

- ☐ Attached is a check in the sum of \$ .
- ☐ Charge Account No. 12-1216 the sum of \$0.00. A duplicate of this transmittal is attached.

**6. Fee Deficiency**

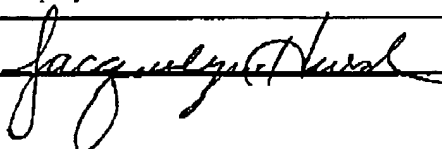
- ☒ If any additional fee is required in connection with this communication, charge Account No. 12-1216. A duplicate copy of this transmittal is attached.

Respectfully submitted,



Mark Joy, Reg. No. 35,562  
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Date: May 24, 2006

MAILING/TRANSMISSION CERTIFICATE UNDER 37 CFR 1.8 OR 1.10			
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Name (Print/Type)	Jacquelyn Hurd		
Signature		Date	May 24, 2006

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Patent Application No. 09/901,512

Applicant: Ross, et al.

Filed: July 9, 2001

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Examiner: Nguyen, Nga B.

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APPELLANTS' REPLY BRIEF**

Mail Stop Appeal Brief -- Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

In accordance with 37 CFR 41.41, appellants hereby submit Appellants' Reply Brief.

The items checked below are appropriate:

**1. Status of Appellant**

This application is on behalf of ☐ other than a small entity or ☒ a small entity.

**2. Oral Hearing**

☒ Appellants requested an oral hearing in accordance with 37 CFR 41.47 at the time appellants filed Appellants' Brief on Appeal.

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**3. Extension of Time**

☐ Appellant petitions for a one-month extension of time under 37 CFR 1.136, the fee for which is \$ 0.00.

☒ Appellants believe that no extension of time is required. However, this conditional petition is being made to provide for the possibility that appellants have inadvertently overlooked the need for a petition and fee for extension of time.

Extension fee due with this request: \$

Application No. 09/901,512

Reply Brief Transmittal

**4. Total Fee Due**

The total fee due is:

Request for Oral Hearing \$500.00 (Previously Paid) ✓  
Extension Fee (if any) \$ 0.00

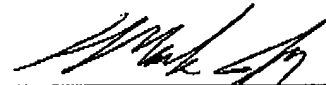
**Total Fee Due: \$0.00****5. Fee Payment**

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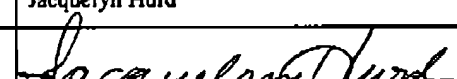
**6. Fee Deficiency**

- ☒ If any additional fee is required in connection with this communication, charge Account No. 12-1216. A duplicate copy of this transmittal is attached.

Respectfully submitted,

  
Mark Joy, Reg. No. 35,362  
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Date: May 24, 2006

MAILING/TRANSMISSION CERTIFICATE UNDER 37 CFR 1.8 OR 1.10			
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Name (Print/Type)	Jacquelyn Hurd		
Signature		Date	May 24, 2006

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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Patent Application No. 09/901,512

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**APPELLANTS' REPLY UNDER 37 C.F.R. SECTION 41.41**

Mail Stop Appeal Brief – Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This paper is filed in response to the Examiner's Answer mailed on March 24, 2006.

Appellants hereby respectfully request allowance of the pending claims for the reasons set forth in Appellants' Appeal Brief filed on February 3, 2006, and for the further reasons stated herein.

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Appellants' Reply Brief

*Status of Claims*

Claims 7-14 and 37-46 are pending and stand finally rejected, and these rejections are presently being appealed. Claims 1-6 and 15-36 have previously been cancelled.

A complete listing of the claims on appeal appears in the Claims Appendix of this paper.

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Appellants' Reply Brief

*Grounds of Rejection to be reviewed on Appeal*

The grounds of rejection to be reviewed on appeal are the grounds stated in the Final Office Action mailed on February 28, 2005, for rejecting the pending claims. The grounds are summarized as follows:

Claims 7, 13, 37-40, 45 and 46 were rejected under 35 U.S.C. §102(b) as being anticipated by Collen, *Hospital Computer Systems*, John Willey and Sons, 1974 (hereinafter the Collen reference).

Claims 8, 10-12 and 42-44 were rejected under 35 U.S.C. §103(a) as being unpatentable over Collen in view of "Official Notice."

Claims 9 and 41 were rejected under 35 U.S.C. §103(a) as being unpatentable over Collen in view of Engleson et al. U.S. Pat. No. 5,781,442 (the Engleson patent).

Claim 14 was rejected under 35 U.S.C. §103(a) as being unpatentable over Collen in view of Samar U.S. Pat. No. 5,778,072 (the Samar patent) and Ballantyne et al. U.S. Pat. No. 5,867,821 (the Ballantyne patent). To reduce the issues on appeal, Appellants do not seek separate review of the specific grounds for the rejection of claim 14 recited in the Final Office Action.



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Appellants' Reply Brief

*Argument*

Appellants have carefully reviewed the Answer. The first portion of the Answer, beginning at page 3 and ending at page 11, is identical to the grounds recited in the Final Office Action from which the present appeal was taken. Appellants have addressed the Answer's grounds for rejection in their previously filed Pre-Appeal Brief Request for Review and Appellants' Appeal Brief, and thus Appellants will not repeat these arguments. The Appellants' argument below addresses (1) the Answer's unduly broad scope attributed to the independent claims as recited in the "Response to Arguments" that begins at page 11 of the Answer; and (2) the Answer's continued reliance upon "official notice" notwithstanding Appellants' specific requests for provision of a reference in support of alleged well known prior art teachings.

**The Rejection of Claims 7, 13, 37-40, 45 and 46 under 35 U.S.C. §102(b)**

The Appeal of the rejection of independent claims 7 and 37 essentially centers upon the proper interpretation of the claim scope of each of the independent claims 7 and 37. Appellants submit that both of the presently pending independent claims require multiple views of an enumeration ("active patient list grease board") of patient records. The Answer concedes that Collen discloses only a *single* grease board view identifying multiple patient records. The other "displays" presented by Collen's system relate to a single, previously selected patient record from the single grease board view. The Answer's rejection of the independent claims is premised upon reading the "multi-view grease board" aspect out of both of the pending independent claims.

The Answer's Response to Arguments misinterprets the elements of the presently pending independent claims 7 and 37 as only requiring a "variety of displays" – regardless of whether the displays present a listing of multiple patient records based upon multiple sets of patient information (Appellants' recited invention) or only a single, previously selected patient record (Collen). Appellants' appealed independent claims, in particular the "wherein clause" at the end of each of the independent claims, in the context of the other elements of the recited claim elements (see, bold claim text below), unequivocally require presenting multiple views containing listings of multiple patient records.

The following is a copy of the two independent claims at issue.

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7. A method of providing access to patient record documentation, patient tracking and order entry information in a system capable of rendering patient information in a **variety of grease board views**, comprising the steps of:

logging a user on to a peripheral terminal, and

displaying, at the peripheral terminal, a name of the user and an **active patient list grease board**, wherein the active patient list grease board is capable of displaying, from each one of a set of active patient records, a set of related information including:

room location,

patient's name,

patient's physician,

nursing orders,

patient priority and elapsed time of stay,

status of assignment of nurse and physician, and

status of X-rays, labs, tests, nurses' orders, records, dictation and vital signs,

wherein **patient record information sets**, from the active patient records, are **presented on the peripheral terminal**, during the displaying step, in accordance with a designated one of the variety of grease board views.

37. A system for presenting, at a peripheral display terminal, patient information in a **variety of grease board views**, the system comprising:

a security module including computer executable instructions for logging a user on to a peripheral terminal, and

a tracking module including computer executable instructions for displaying, at the peripheral display terminal, an **active patient list grease board**, wherein the active patient list grease board is capable of displaying, from each one of a set of active patient records, a set of related information including the patient's name and a variety of task-related information,

wherein **patient record information sets**, from the active patient records, are **presented on the peripheral terminal**, during the displaying step, in accordance with a designated one of the variety of grease board views.

Appellants' recited invention is directed to a patient information access system/interface that supports a *variety of (i.e., multiple) grease board views* that enumerate active patient records. The enumerated patient records, corresponding to sets of stored patient information record sets, are displayed in accordance with a designated one of the *variety of* supported grease board views. To anticipate the claimed invention, Collen must support multiple ways in which to display a patient grease board (representing a set of patients' records). However, Collen discloses an electronic grease board that supports only a *single*

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Appellants' Reply Brief

grease board view. Furthermore, the pending claims cannot be rendered obvious by the prior art since multiple supported views are not even remotely suggested by the Collen reference.

Appellants have repeatedly sought to explain the scope and meaning of the presently pending independent claims. The Answer, contrary to the disclosure of the invention in the application and Appellants efforts to explain the meaning of the pending claims through references to the specification, continues to apply an unduly broad interpretation of the presently pending claims to conclude that displaying a sub-view for a particular selected patient record from a top-level view constitutes multiple views of patient lists. The Collen reference upon which the Answer relies discloses only a single grease board view and therefore does not render the recited invention in claims 7 and 37 unpatentable.

With regard to the rejection of claim 13, the Answer merely repeats its citation to Fig. 6-1a in Collen. However, as previously explained, Fig. 6-1a of Collen is not a grease board view. Appellants maintain their traversal of the rejection of claim 13 for at least this reason.

The Answer does not provide any response to Appellants' previous argument regarding the rejection of claims 45 and 46. While apparently conceding that the Appellants are correct, the Answer does not state that claims 45 and 46 are patentable. Appellants request clarification of the status of claims 45 and 46 which the Answer apparently concedes are not anticipated by the Collen reference.

**The Rejection of Claims 8, 10-12 and 42-44 under 35 U.S.C. §103(a)**

Appellants' traversal of the previous Final Office Action's "Official Notice" is more than adequate under the recent Federal Circuit decisions providing guidance with regard to the use of "Official Notice." See, MPEP (Rev. 3, August 2005) section 2144.03. Appellants specifically identified the basis for their traversal of "official notice" taken several times in the Final Office Action. The Answer's attempt to place the burden on Appellant to show that the "official notice" assertions are untrue is improper and unsupported by the guidelines set forth in section 2144.03 of the MPEP and the decisions of the Federal Circuit cited therein. For the specific reasons set forth in the Appeal Brief, Appellants maintain their traversal of "official notice" taken multiple times in the Final Office Action.

The Final Office Action violates the MPEP's standards for reliance on "official notice". See, MPEP (Rev. 3, August 2005) section 2144.03(A). The MPEP states that "While 'official notice' may be relied upon, these circumstances should be rare when an application is under final rejection.... It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not

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Appellants' Reply Brief

capable of instant and unquestionable demonstration as being well-known." In the present situation, the Final Office Action's reliance upon "official notice" deprives Appellants of the opportunity to show that the claimed element is not well known in the context of the claimed combination. The Answer's continued reliance upon Official Notice to support the rejections rather than simply providing a reference in support of what is apparently "notoriously well known in the art" bolsters Appellants' position that indeed each of these elements is not well known in the context of the presently claimed invention.

Furthermore, Appellants note that the Answer has not remedied the absence of support for its grounds for modifying Collen to render the inventions recited in **claims 10-12 and 42-44**. Appellants previously traversed the assertion, by the Final Office Action, that it was well known at the time of the invention that providing the specified views as part of a variety of supported grease board views would enable health care providers to efficiently, quickly and easily identify the patients in order to deliver care to the patients. This assertion is troublesome in view of the absence of any teachings in the prior art of supporting a variety of grease board views. For at least this additional reason the continued rejections of claims 10-12 and 42-44 is improper. Appellants respectfully request that this rejection be withdrawn in the event that a reference is not provided in support of the Office Action's assertions that it was known in the art at the time of the invention that the recited combinations would indeed enable health care providers to "efficiently, quickly and easily identify the patients in order to deliver care to the patients."

**The Rejection of Claims 9 and 41 under 35 U.S.C. §103(a)**

Appellants traverse the continued rejection of claims 9 and 41 as obvious over Collen in view of the Engleson patent. Claims 9 and 41 specify at least one of the grease board views being provided in the form of a "department layout." Appellants previously stated in their Appeal Brief that it is clear from the accompanying written description of FIG. 12 that the department layout view in Engleson does not provide access to the patient information recited in claims 7 and 37 that is a pre-requisite for a grease board in accordance with Appellants' recited invention. The Answer concedes that Engleson does not disclose these elements and therefore the rejection of claims 9 and 41, which incorporate all the elements of claims 7 and 37, respectively, would not render the claimed invention obvious if Appellants' claim construction is proper.

Furthermore, Appellants maintain their traversal of the assertion, by the Final Office Action, that it was well known at the time of the invention that providing the specified views

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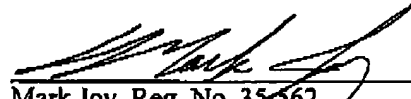
Appellants' Reply Brief

as part of a variety of supported grease board views would enable health care providers to efficiently, quickly and easily identify the patients in order to deliver care to the patients. This assertion is troublesome in view of the absence of any teachings in the prior art of supporting a variety of grease board views. For at least this additional reason the rejections of claims 9 and 41 is improper. Appellants respectfully request that this rejection be withdrawn in the event that a reference is not provided in support of the Office Action's assertions that it was known in the art at the time of the invention that the recited combinations would indeed enable health care providers to "efficiently, quickly and easily identify the patients in order to deliver care to the patients."

*Conclusion*

A grease board, in the context of a medical environment, refers to a display containing a list of current patients. Recently, the physical "grease boards" (such as those seen on the popular TV show "ER") have been replaced by ones that are computer system-based. The pending claims all recite providing a variety of grease board views. Such multiple views of a set of active patient records is not disclosed in the cited Collen reference that provides only a *single* grease board view (FIG. 6-1b). The Answer's contentions have been carefully considered, but the basic truth of the matter is that Appellants' claims call for providing a variety of grease board views, each enumerating a listing of patient records. Collen, as conceded by the Answer, simply does not contemplate such multiple grease board views. Accordingly, independent claims 7 and 37 cannot be anticipated by Collen. Nor can any of the dependent claims be rendered unpatentable by the prior art, and Appellants request withdrawal of the presently pending rejections.

Respectfully submitted,

  
Mark Joy, Reg. No. 35,562  
LEYDIG, VOIT & MAYER, LTD.  
Two Prudential Plaza  
180 North Stetson Ave., Suite 4900  
Chicago, Illinois 60601-6780  
(312) 616-5600 (telephone)  
(312) 616-5700 (facsimile)

Date: May 24, 2006

Application No. 09/901,512

Appellants' Reply Brief

*Claims Appendix*

7. (Previously presented) A method of providing access to patient record documentation, patient tracking and order entry information in a system capable of rendering patient information in a variety of grease board views, comprising the steps of:

logging a user on to a peripheral terminal, and

displaying, at the peripheral terminal, a name of the user and an active patient list grease board, wherein the active patient list grease board is capable of displaying, from each one of a set of active patient records, a set of related information including:

room location,

patient's name,

patient's physician,

nursing orders,

patient priority and elapsed time of stay,

status of assignment of nurse and physician, and

status of X-rays, labs, tests, nurses' orders, records, dictation and vital signs,

wherein patient record information sets, from the active patient records, are presented on the peripheral terminal, during the displaying step, in accordance with a designated one of the variety of grease board views.

8. (Previously presented) The method of claim 7, wherein an ordered status is shown in small letters and a completed status is shown by large letters for X-rays, labs, tests, nurses' orders and dictation transcription.

9. (Previously presented) The method of claim 7, wherein the displaying step comprises displaying the active patient list grease board information in department layout.

10. (Previously presented) The method of claim 7, wherein the displaying step comprises displaying the active patient list grease board information in the form of a list of patients waiting to be seen by a physician, in order of priority.

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11. (Previously presented) The method of claim 7, wherein the displaying step comprises displaying the active patient list grease board information in the form of a list of patient complaints.

12. (Previously presented) The method of claim 7, wherein the displaying step comprises displaying the active patient list grease board information in the form of a list of patients whose reports have not been dictated by a physician.

13. (Previously presented) The method of claim 7, wherein the logging a user on comprises inserting a security card in a receiver connected to the peripheral terminal, which logs on and identifies the user and brings up the active patient list grease board.

14. (Previously presented) The method of claim 13, wherein pulling the security card from the receiver automatically exits the screen, establishes a security lockout on the peripheral terminal, and saves the data which has been entered on the screen by transferring the data from the peripheral terminal to a file server communicatively connected to the peripheral terminal.

37. (Previously presented) A system for presenting, at a peripheral display terminal, patient information in a variety of grease board views, the system comprising:

- a security module including computer executable instructions for logging a user on to a peripheral terminal, and

- a tracking module including computer executable instructions for displaying, at the peripheral display terminal, an active patient list grease board, wherein the active patient list grease board is capable of displaying, from each one of a set of active patient records, a set of related information including the patient's name and a variety of task-related information, wherein patient record information sets, from the active patient records, are presented on the peripheral terminal, during the displaying step, in accordance with a designated one of the variety of grease board views.

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Appellants' Reply Brief

38. (Previously presented) The system of claim 37 wherein the security module and tracking module cooperatively limit access, by a logged on user, to patient information associated with ones of the set of active patient records.

39. (Previously presented) The system of claim 38 wherein access to patient information is provided in the form of a set of functions that modify data associated with the active patient records.

40. (Previously presented) The system of claim 39 wherein access is based upon a user type associated with the logged on user.

41. (Previously presented) The system of claim 37 wherein the variety of grease board views comprises a department layout view of patient information associated with the active patient records that includes a map of rooms and patient information associated with an occupant.

42. (Previously presented) The system of claim 37, wherein the variety of grease board views comprises a waiting patients view including a list of patients waiting to be seen by a physician, in order of priority.

43. (Previously presented) The system of claim 37, wherein the variety of grease board views comprises a patient complaints view.

44. (Previously presented) The system of claim 37, wherein the variety of grease board views comprises a dictation status view comprising at least a list of patients whose reports have not been dictated by a physician.



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Appellants' Reply Brief

45. (Previously presented) The system of claim 37, wherein the variety of grease board views comprises an outstanding orders view comprising at least a list of tasks that are pending for identified patients.

46. (Previously presented) The system of claim 37, wherein the variety of grease board views comprises a vital signs view comprising most recent vital signs taken for a list of identified patients.

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Appellants' Reply Brief

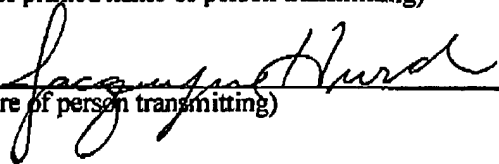
**CERTIFICATE OF FACSIMILE TRANSMISSION**

I hereby certify that this **APPELLANTS' REPLY UNDER 37 C.F.R. §41.41** (along with any documents referred to as being attached or enclosed) is being transmitted by facsimile to the United States Patent and Trademark Office, Attention: Examiner Nga B. Nguyen, Art Unit 3628, Facsimile Number (571) 273-8300, on the date indicated.

Date: May 24, 2006

Jacquelyn Hurd

(Typed or printed name of person transmitting)

  
(Signature of person transmitting)